

# CONNECTICUT CONSTRUCTION INDUSTRIES ASSOCIATION, INC.



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## **Senate Bill 473, An Act Concerning State Contracting Government Administration and Elections Committee March 19, 2010**

### **AGC of Connecticut Position: Opposed to section 5**

The Connecticut Construction Industries Association, Inc. is the most diverse commercial construction industry trade association in Connecticut. Formed over 40 years ago, CCIA is an organization of associations, where all sectors of the commercial construction industry work together to advance and promote their shared interests. CCIA members have a long history of providing quality work for the public benefit.

CCIA is comprised of nine divisions, including the Associated General Contractors of Connecticut, Inc.; The Connecticut Road Builders Association, Inc.; Utility Contractors Association of Connecticut, Inc.; The Connecticut Ready Mixed Concrete Association, Inc.; and Connecticut Asphalt and Aggregate Producers Association. CCIA has more than 350 members statewide, including contractors, subcontractors, suppliers, and professional organizations that service the construction industry.

Associated General Contractors of Connecticut, a division of CCIA, represents commercial, industrial, and institutional construction contractors, subcontractors, material suppliers and professionals serving the construction industry. AGC of Connecticut is the Connecticut chapter of the Associated General Contractors of America, a national contractors trade association.

Section 5 of Senate Bill 473, An Act Concerning State Contracting, would authorize the Commissioner of Administrative Services to deny a prequalification certificate to any contractor or substantial subcontractor who, within the past three years, has received four or more unsatisfactory written evaluations. The Commissioner is presently authorized to not issue or renew a prequalification certificate to disqualified contractors or contractors that have a principal or key personnel who has been convicted within five years of acts that could have resulted in disqualification. Additionally, section 7 of the bill extends liability protections to any person who completes a subcontractor evaluation.

AGC of Connecticut is **opposed** to section 5 of Senate Bill 473 because, in its present form, it can easily put good contractors that have a long history of performing quality work for the public benefit out of business.

Even though AGC of Connecticut strongly supports contractor evaluations as an integral part of an effective DAS prequalification system, our association believes that contractors should be afforded a hearing to test the accuracy of an evaluation, or explain extenuating circumstances relating to an evaluation before being denied a prequalification certificate.



Simply basing a denial of prequalification on four unsatisfactory evaluations can lead to unintended results. For example, contractor evaluations may be misused as leverage in construction disputes, or to gain an advantage over contractors performing on projects. The parties to construction projects often have differing opinions regarding the interpretation of contract provisions, drawings, and specifications that lead to disputes. It is easy to see how the party in control of an evaluation could use it as leverage to gain an advantage over the contractor to be evaluated on a project.

Furthermore, different government entities may use different criteria or standards as a basis for evaluations. What may be poor performance to an evaluator in one state or contracting agency with low standards and very subjective criteria may be satisfactory to another.

The consequences of this are staggering for a contractor. Any contractor that is denied a prequalification certificate would effectively be eliminated from contracting.

The attached article, "The Rise of the Performance Evaluation: New Developments in Contractor Challenges to Adverse Evaluations Under the Contract Disputes Act," from the Winter 2010 edition of the American Bar Association publication *The Procurement Lawyer*, illustrates some of the challenges and real danger that a lack of an explicit hearing requirement poses in federal contracting.

AGC of Connecticut was the initial supporter and advocate for the contractor prequalification program and supports these efforts to improve its effectiveness, however we believe that Senate Bill 473 should provide sufficient opportunity for contractors to test and explain evaluations. Therefore, we respectfully request that the committee reject section 5 of the bill or, in the alternative, add a provision that would allow for a hearing.

Please contact John Butts, Executive Director of AGC of Connecticut, or Matthew Hallisey, Director of Government Relations and Legislative Counsel for CCIA, at 860-529-6855, if you have any questions or if you need additional information.